

SENATE BILL No. 141

By Committee on Judiciary

2-4

1 AN ACT enacting the Kansas uniform directed trust act; relating to power
2 over a trust held by a nontrustee; establishing powers and duties of a
3 trust director and a directed trustee; amending K.S.A. 58a-703 and
4 K.S.A. 2020 Supp. 58a-103, 58a-105 and 58a-603 and repealing the
5 existing sections; also repealing K.S.A. 58a-808.

6
7 *Be it enacted by the Legislature of the State of Kansas:*

8 New Section 1. Sections 1 through 18, and amendments thereto, may
9 be cited as the Kansas uniform directed trust act.

10 New Sec. 2. As used in the Kansas uniform directed trust act:

11 (1) "Breach of trust" includes a violation by a trust director or trustee
12 of a duty imposed on that director or trustee by the terms of the trust, this
13 act or law of this state pertaining to trusts other than this act.

14 (2) "Directed trust" means a trust for which the terms of the trust
15 grant a power of direction.

16 (3) "Directed trustee" means a trustee that is subject to a trust
17 director's power of direction.

18 (4) "Person" means an individual, estate, business or nonprofit entity,
19 public corporation, government or governmental subdivision, agency or
20 instrumentality, or other legal entity.

21 (5) "Power of direction" means a power over a trust granted to a
22 person by the terms of the trust to the extent the power is exercisable while
23 the person is not serving as a trustee. The term includes a power over the
24 investment, management, or distribution of trust property or other matters
25 of trust administration. The term excludes the powers described in section
26 5(b), and amendments thereto.

27 (6) "Settlor" means a person, including a testator, that creates, or
28 contributes property to, a trust. If more than one person creates or
29 contributes property to a trust, each person is a settlor of the portion of the
30 trust property attributable to that person's contribution except to the extent
31 another person has the power to revoke or withdraw that portion.

32 (7) "State" means a state of the United States, the District of
33 Columbia, Puerto Rico, the United States Virgin Islands, or any other
34 territory or possession subject to the jurisdiction of the United States.

35 (8) "Terms of a trust" means:

36 (A) Except as otherwise provided in subsection (8)(B), the

1 manifestation of the settlor's intent regarding a trust's provisions as:

2 (i) Expressed in the trust instrument; or
3 (ii) established by other evidence that would be admissible in a
4 judicial proceeding; or

5 (B) the trust's provisions as established, determined, or amended by:

6 (i) A trustee or trust director in accordance with applicable law;

7 (ii) court order; or

8 (iii) a nonjudicial settlement agreement under K.S.A. 58a-111, and
9 amendments thereto.

10 (9) "Trust director" means a person that is granted a power of
11 direction by the terms of a trust to the extent the power is exercisable
12 while the person is not serving as a trustee. The person is a trust director
13 whether or not the terms of the trust refer to the person as a trust director
14 and whether or not the person is a beneficiary or settlor of the trust.

15 (10) "Trustee" includes an original, additional, and successor trustee,
16 and a cotrustee.

17 New Sec. 3. (a) The Kansas uniform directed trust act applies to a
18 trust, whenever created, that has its principal place of administration in this
19 state, subject to the following rules:

20 (1) If the trust was created before July 1, 2021, this act applies only to
21 a decision or action occurring on or after July 1, 2021.

22 (2) If the principal place of administration of the trust is changed to
23 this state on or after July 1, 2021, this act applies only to a decision or
24 action occurring on or after July 1, 2021.

25 (b) Without precluding other means to establish a sufficient
26 connection with the designated jurisdiction in a directed trust, terms of the
27 trust which designate the principal place of administration of the trust are
28 valid and controlling if:

29 (1) A trustee's principal place of business is located in or a trustee is a
30 resident of the designated jurisdiction;

31 (2) a trust director's principal place of business is located in or a trust
32 director is a resident of the designated jurisdiction; or

33 (3) all or part of the administration occurs in the designated
34 jurisdiction.

35 New Sec. 4. The common law and principles of equity supplement
36 the Kansas uniform directed trust act, except to the extent modified by this
37 act or law of this state other than this act.

38 New Sec. 5. (a) In this section, "power of appointment" means a
39 power that enables a person acting in a nonfiduciary capacity to designate
40 a recipient of an ownership interest in or another power of appointment
41 over trust property.

42 (b) The Kansas uniform directed trust act does not apply to a:

43 (1) Power of appointment;

- 1 (2) power to appoint or remove a trustee or trust director;
- 2 (3) power of a settlor over a trust to the extent the settlor has a power
3 to revoke the trust;
- 4 (4) power of a beneficiary over a trust to the extent the exercise or
5 nonexercise of the power affects the beneficial interest of:
- 6 (A) The beneficiary; or
- 7 (B) another beneficiary represented by the beneficiary under K.S.A.
8 58a-301 through 58a-305, and amendments thereto, with respect to the
9 exercise or nonexercise of the power; or
- 10 (5) power over a trust if:
- 11 (A) The terms of the trust provide that the power is held in a
12 nonfiduciary capacity; and
- 13 (B) the power must be held in a nonfiduciary capacity to achieve the
14 settlor's tax objectives under the internal revenue code of 1986, as in effect
15 on July 1, 2021.
- 16 (c) Unless the terms of a trust provide otherwise, a power granted to a
17 person to designate a recipient of an ownership interest in or power of
18 appointment over trust property which is exercisable while the person is
19 not serving as a trustee is a power of appointment and not a power of
20 direction.
- 21 New Sec. 6. (a) Subject to section 7, and amendments thereto, the
22 terms of a trust may grant a power of direction to a trust director.
- 23 (b) Unless the terms of a trust provide otherwise:
- 24 (1) A trust director may exercise any further power appropriate to the
25 exercise or nonexercise of a power of direction granted to the director
26 under subsection (a); and
- 27 (2) trust directors with joint powers must act by majority decision.
- 28 New Sec. 7. A trust director is subject to the same rules as a trustee in
29 a like position and under similar circumstances in the exercise or
30 nonexercise of a power of direction or further power under section 6(b)(1),
31 and amendments thereto, regarding:
- 32 (a) A payback provision in the terms of a trust necessary to comply
33 with the reimbursement requirements of medicaid law in section 1917 of
34 the social security act, 42 U.S.C. § 1396p(d)(4)(A), as in effect on July 1,
35 2021; and
- 36 (b) a charitable interest in the trust, including notice regarding the
37 interest to the attorney general.
- 38 New Sec. 8. (a) Subject to subsection (b), with respect to a power of
39 direction or further power under section 6(b)(1), and amendments thereto:
- 40 (1) A trust director has the same fiduciary duty and liability in the
41 exercise or nonexercise of the power:
- 42 (A) If the power is held individually, as a sole trustee in a like
43 position and under similar circumstances; or

1 (B) if the power is held jointly with a trustee or another trust director,
2 as a cotrustee in a like position and under similar circumstances; and

3 (2) the terms of the trust may vary the director's duty or liability to
4 the same extent the terms of the trust could vary the duty or liability of a
5 trustee in a like position and under similar circumstances.

6 (b) Unless the terms of a trust provide otherwise, if a trust director is
7 licensed, certified, or otherwise authorized or permitted by law other than
8 the Kansas uniform directed trust act to provide health care in the ordinary
9 course of the director's business or practice of a profession, to the extent
10 the director acts in that capacity, the director has no duty or liability under
11 this act.

12 (c) The terms of a trust may impose a duty or liability on a trust
13 director in addition to the duties and liabilities under this section.

14 New Sec. 9. (a) Subject to subsection (b), a directed trustee shall take
15 reasonable action to comply with a trust director's exercise or nonexercise
16 of a power of direction or further power under section 6(b)(1), and
17 amendments thereto, and the trustee is not liable for the action.

18 (b) A directed trustee must not comply with a trust director's exercise
19 or nonexercise of a power of direction or further power under section 6(b)
20 (1), and amendments thereto, to the extent that by complying the trustee
21 would engage in willful misconduct.

22 (c) An exercise of a power of direction under which a trust director
23 may release a trustee or another trust director from liability for breach of
24 trust is not effective if:

25 (1) The breach involved the trustee's or other director's willful
26 misconduct;

27 (2) the release was induced by improper conduct of the trustee or
28 other director in procuring the release; or

29 (3) at the time of the release, the director did not know the material
30 facts relating to the breach.

31 (d) A directed trustee that has reasonable doubt about its duty under
32 this section may petition the district court for instructions.

33 (e) The terms of a trust may impose a duty or liability on a directed
34 trustee in addition to the duties and liabilities under this section.

35 New Sec. 10. (a) Subject to section 11, and amendments thereto, a
36 trustee shall provide information to a trust director to the extent the
37 information is reasonably related both to:

38 (1) The powers or duties of the trustee; and

39 (2) the powers or duties of the director.

40 (b) Subject to section 11, and amendments thereto, a trust director
41 shall provide information to a trustee or another trust director to the extent
42 the information is reasonably related both to:

43 (1) The powers or duties of the director; and

1 (2) the powers or duties of the trustee or other director.

2 (c) A trustee that acts in reliance on information provided by a trust
3 director is not liable for a breach of trust to the extent the breach resulted
4 from the reliance, unless by so acting the trustee engages in willful
5 misconduct.

6 (d) A trust director that acts in reliance on information provided by a
7 trustee or another trust director is not liable for a breach of trust to the
8 extent the breach resulted from the reliance, unless by so acting the trust
9 director engages in willful misconduct.

10 New Sec. 11. (a) Unless the terms of a trust provide otherwise:

11 (1) A trustee does not have a duty to:

12 (A) Monitor a trust director; or

13 (B) inform or give advice to a settlor, beneficiary, trustee, or trust
14 director concerning an instance in which the trustee might have acted
15 differently than the director; and

16 (2) by taking an action described in paragraph (1), a trustee does not
17 assume the duty excluded by paragraph (1).

18 (b) Unless the terms of a trust provide otherwise:

19 (1) A trust director does not have a duty to:

20 (A) Monitor a trustee or another trust director; or

21 (B) inform or give advice to a settlor, beneficiary, trustee, or another
22 trust director concerning an instance in which the director might have
23 acted differently than a trustee or another trust director; and

24 (2) by taking an action described in paragraph (1), a trust director
25 does not assume the duty excluded by paragraph (1).

26 New Sec. 12. The terms of a trust may relieve a cotrustee from duty
27 and liability with respect to another cotrustee's exercise or nonexercise of a
28 power of the other cotrustee to the same extent that in a directed trust a
29 directed trustee is relieved from duty and liability with respect to a trust
30 director's power of direction under sections 9 through 11, and amendments
31 thereto.

32 New Sec. 13. (a) An action against a trust director for breach of trust
33 must be commenced within the same limitation period as under K.S.A.
34 58a-1005, and amendments thereto, for an action for breach of trust
35 against a trustee in a like position and under similar circumstances.

36 (b) A report or accounting has the same effect on the limitation period
37 for an action against a trust director for breach of trust that the report or
38 accounting would have under K.S.A. 58a-1005, and amendments thereto,
39 in an action for breach of trust against a trustee in a like position and under
40 similar circumstances.

41 New Sec. 14. In an action against a trust director for breach of trust,
42 the director may assert the same defenses a trustee in a like position and
43 under similar circumstances could assert in an action for breach of trust

1 against the trustee.

2 New Sec. 15. (a) By accepting appointment as a trust director of a
3 trust subject to the Kansas uniform directed trust act, the director submits
4 to personal jurisdiction of the courts of this state regarding any matter
5 related to a power or duty of the director.

6 (b) This section does not preclude other methods of obtaining
7 jurisdiction over a trust director.

8 New Sec. 16. Unless the terms of a trust provide otherwise, the rules
9 applicable to a trustee apply to a trust director regarding the following
10 matters:

11 (a) Acceptance under K.S.A. 58a-701, and amendments thereto;

12 (b) giving of bond to secure performance under K.S.A. 58a-702, and
13 amendments thereto;

14 (c) reasonable compensation under K.S.A. 58a-708, and amendments
15 thereto;

16 (d) resignation under K.S.A. 58a-705, and amendments thereto;

17 (e) removal under K.S.A. 58a-706, and amendments thereto; and

18 (f) vacancy and appointment of successor under K.S.A. 58a-704, and
19 amendments thereto.

20 New Sec. 17. In applying and construing this uniform act,
21 consideration must be given to the need to promote uniformity of the law
22 with respect to its subject matter among states that enact it.

23 New Sec. 18. The Kansas uniform directed trust act modifies, limits
24 or supersedes the federal electronic signatures in global and national
25 commerce act, 15 U.S.C. § 7001 et seq., but does not modify, limit or
26 supersede § 7001(c) of that act or authorize electronic delivery of any of
27 the notices described in § 7003(b) of that act.

28 Sec. 19. K.S.A. 2020 Supp. 58a-103 is hereby amended to read as
29 follows: 58a-103. As used in this code:

30 (1) "Action," with respect to an act of a trustee, includes a failure to
31 act.

32 (2) "Beneficiary" means a person that:

33 (A) Has a present or future beneficial interest in a trust, vested or
34 contingent; or

35 (B) in a capacity other than that of trustee, holds a power of
36 appointment over trust property.

37 (3) "Charitable trust" means a trust, or portion of a trust, created for a
38 charitable purpose described in ~~subsection (a)~~ of K.S.A. 58a-405(a), and
39 amendments thereto.

40 (4) "Conservator" means a person appointed by the court pursuant to
41 K.S.A. 59-3001 et seq., and amendments thereto, to administer the estate
42 of a minor or adult individual.

43 (5) "Environmental law" means a federal, state, or local law, rule,

1 regulation, or ordinance relating to protection of the environment.

2 (6) "Guardian" means a person appointed by the court pursuant to
3 K.S.A. 59-3001 et seq., and amendments thereto, to make decisions
4 regarding the support, care, education, health, and welfare of a minor or
5 adult individual. The term does not include a guardian ad litem.

6 (7) "Interests of the beneficiaries" means the beneficial interests
7 provided in the terms of the trust.

8 (8) "Jurisdiction," with respect to a geographic area, includes a state
9 or country.

10 (9) "Person" means an individual, corporation, business trust, estate,
11 trust, partnership, limited liability company, association, joint venture,
12 government; governmental subdivision, agency, or instrumentality; public
13 corporation, or any other legal or commercial entity.

14 (10) "Power of withdrawal" means a presently exercisable general
15 power of appointment other than a power:

16 (A) Exercisable by a trustee and limited by an ascertainable standard
17 relating to an individuals health, education, support or maintenance within
18 the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the internal revenue
19 code of 1986, as in effect on July 1, ~~2006~~ 2021; or

20 (B) exercisable by another person only upon consent of the trustee or
21 a person holding an adverse interest.

22 (11) "Property" means anything that may be the subject of ownership,
23 whether real or personal, legal or equitable, or any interest therein.

24 (12) (A) "Qualified beneficiary" means a beneficiary who, as of the
25 date in question, either is eligible to receive mandatory or discretionary
26 distributions of trust income or principal, or would be so eligible if the
27 trust terminated on that date.

28 (B) For the purpose of trustee determining "qualified beneficiaries" of
29 a trust in which a beneficial interest is subject to a power of appointment
30 of any nature, the trustee may conclusively presume such power of
31 appointment has not been exercised unless the trustee has been furnished
32 by the powerholder or the legal representative of the powerholder or the
33 powerholder's estate with the original or a copy of an instrument validly
34 exercising such power of appointment, in which event the qualified
35 beneficiaries shall be subsequently determined by giving due consideration
36 to such exercise unless and until the trustee has been given notification in a
37 similar manner of an instrument which validly revokes or modifies such
38 exercise.

39 (13) "Revocable," as applied to a trust, means revocable by the settlor
40 without the consent of the trustee or a person holding an adverse interest.

41 (14) "Settlor" means a person, including a testator, who creates, or
42 contributes property to, a trust. If more than one person creates or
43 contributes property to a trust, each person is a settlor of the portion of the

1 trust property attributable to that person's contribution except to the extent
2 another person has the power to revoke or withdraw that portion.

3 (15) "Spendthrift provision" means a term of a trust which restrains
4 either voluntary or involuntary transfer of a beneficiary's interest.

5 (16) "State" means a state of the United States, the District of
6 Columbia, Puerto Rico, the United States Virgin Islands, or any territory or
7 insular possession subject to the jurisdiction of the United States. The term
8 includes an Indian tribe or band recognized by federal law or formally
9 acknowledged by a state.

10 (17) "Terms of a trust" means:

11 (A) The manifestation of the settlor's intent regarding a trust's
12 provisions as:

13 (i) Expressed in the trust instrument; or ~~as may be~~

14 (ii) established by other evidence that would be admissible in a
15 judicial proceeding; or

16 (B) *the trust's provision as established, determined or amended by:*

17 (i) *A trustee or trust director in accordance with applicable law;*

18 (ii) *court order; or*

19 (iii) *a nonjudicial settlement agreement under K.S.A. 58-111, and*
20 *amendments thereto.*

21 (18) "Trust instrument" means an instrument executed by the settlor
22 that contains terms of the trust, including any amendments thereto.

23 (19) "Trustee" includes an original, additional, and successor trustee,
24 and a cotrustee.

25 Sec. 20. K.S.A. 2020 Supp. 58a-105 is hereby amended to read as
26 follows: 58a-105. (a) Except as otherwise provided in the terms of the
27 trust, this code governs the duties and powers of a trustee, relations among
28 trustees and the rights and interests of a beneficiary.

29 (b) The terms of a trust prevail over any provision of this code
30 except:

31 (1) The requirements for creating a trust;

32 (2) *subject to sections 9, 11 and 12, and amendments thereto*, the duty
33 of a trustee to act in good faith and administer the trust in accordance with
34 K.S.A. 58a-801, and amendments thereto;

35 (3) the requirement that a trust and its terms be for the benefit of its
36 beneficiaries, and that the trust have a purpose that is lawful, not contrary
37 to public policy and possible to achieve;

38 (4) the power of the court to modify or terminate a trust under K.S.A.
39 58a-410 through 58a-416, and amendments thereto;

40 (5) the effect of the rights of creditors to reach a trust as provided in
41 article 5 of chapter 58a of the Kansas Statutes Annotated, and amendments
42 thereto;

43 (6) the power of the court under K.S.A. 58a-702, and amendments

1 thereto, to require, dispense with, or modify or terminate a bond;

2 (7) the power of the court under ~~subsection (b)~~ of K.S.A. 58a-708(b),
3 and amendments thereto, to adjust a trustee's compensation specified in the
4 terms of the trust which is unreasonably low or high;

5 (8) the effect of an exculpatory term under K.S.A. 58a-1008, and
6 amendments thereto;

7 (9) the rights under K.S.A. 58a-1010 through 58a-1013, and
8 amendments thereto, of a person other than a trustee or beneficiary;

9 (10) periods of limitation for commencing a judicial proceeding
10 under K.S.A. 58a-604, and amendments thereto;

11 (11) the power of the court to take such action and exercise such
12 jurisdiction as may be necessary in the interests of justice; and

13 (12) the barring of claims against trusts and trustees under K.S.A.
14 58a-818, and amendments thereto.

15 (c) Notwithstanding any provisions of the Kansas uniform trust code
16 to the contrary, any trust created by will and admitted to probate shall be
17 subject to the requirements of chapter 59 of the Kansas Statutes
18 Annotated, *and amendments thereto*.

19 Sec. 21. K.S.A. 2020 Supp. 58a-603 is hereby amended to read as
20 follows: 58a-603. (a) While a trust is revocable, the duties of the trustee
21 are owed exclusively to the settlor. *While a trust is revocable, the trustee*
22 *may follow a direction of the settlor that is contrary to the terms of the*
23 *trust.*

24 (b) During the period a power of withdrawal may be exercised, the
25 holder of the power has the rights of a settlor of a revocable trust under
26 this section to the extent of the property subject to the power.

27 (c) (1) If a settlor of a revocable trust is or becomes an incapacitated
28 person, on petition of the settlor's legal representative, an adult member of
29 the settlor's family or any interested person, including a person interested
30 in the welfare of the settlor, for good cause shown, the court may: Order
31 the trustee to exercise or refrain from exercising the trustee's authority in a
32 manner inconsistent with the trustee's fiduciary responsibilities under the
33 provisions of the trust; remove the trustee; require the trustee to account;
34 and issue such other orders as the court finds will be in the best interests of
35 the settlor.

36 (2) (A) The court may require any person petitioning for any such
37 order to file a bond in such amount and with such sureties as required by
38 the court to indemnify either the trustee or the trust estate for the expenses,
39 including attorney fees, incurred with respect to such proceeding.

40 (B) None of the actions described in this section shall be taken by the
41 court until after hearing upon reasonable notice to the trustee, the settlor,
42 and any legal representative of the settlor, such as a conservator or
43 attorney-in-fact under a durable power of attorney authorizing the

1 attorney-in-fact to act on the behalf of the settlor in such matters.

2 (C) If there is no legal representative of the settlor, the court shall
3 appoint a guardian ad litem to represent the settlor in such proceeding.

4 (D) In the event of an emergency as determined by the court, the
5 court, without notice, may enter such temporary order as seems proper to
6 the court, but no such temporary order shall be effective for more than 30
7 days unless extended by the court after hearing on reasonable notice to the
8 persons identified as herein provided.

9 Sec. 22. K.S.A. 58a-703 is hereby amended to read as follows: 58a-
10 703. (a) Cotrustees who are unable to reach a unanimous decision may act
11 by majority decision.

12 (b) If a vacancy occurs in a cotrusteeship, the remaining cotrustees
13 may act for the trust.

14 (c) *Subject to section 12, and amendments thereto*, a cotrustee must
15 participate in the performance of a trustee's function unless the cotrustee is
16 unavailable to perform the function because of absence, illness,
17 disqualification under other law, or other temporary incapacity or the
18 cotrustee has properly delegated the performance of the function to
19 another trustee.

20 (d) If a cotrustee is unavailable to perform duties because of absence,
21 illness, disqualification under other law, or other temporary incapacity, and
22 prompt action is necessary to achieve the purposes of the trust or to avoid
23 injury to the trust property, the remaining cotrustee or a majority of the
24 remaining cotrustees may act for the trust.

25 (e) A trustee may not delegate to a cotrustee the performance of a
26 function the settlor reasonably expected the trustees to perform jointly.
27 Unless a delegation was irrevocable, a trustee may revoke a delegation
28 previously made.

29 (f) Except as otherwise provided in subsection (g), a trustee who does
30 not join in an action of another trustee is not liable for the action.

31 (g) *Subject to section 12, and amendments thereto*, each trustee shall
32 exercise reasonable care to:

33 (1) Prevent a cotrustee from committing a breach of trust; and

34 (2) compel a cotrustee to redress a breach of trust.

35 (h) A dissenting trustee who joins in an action at the direction of the
36 majority of the trustees and who notified any cotrustee of the dissent, in
37 writing, at or before the time of the action is not liable for the action.

38 Sec. 23. K.S.A. 58a-703 and 58a-808 and K.S.A. 2020 Supp. 58a-
39 103, 58a-105 and 58a-603 are hereby repealed.

40 Sec. 24. This act shall take effect and be in force from and after its
41 publication in the statute book.